

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Palau National Communications Corporation

Petition for Declaratory Ruling that Palau
National Communications Corporation Is
Subject to FCC Jurisdiction and Eligible to
Participate in Universal Service Programs and
the National Exchange Carrier Association

Petition for Related Waivers and Application
for International Section 214 Authority

Federal-State Joint Board on Universal Service

CC Docket No. 96-45

COMMENTS OF BELL SOUTH CORPORATION

BellSouth Corporation, on behalf of itself and its wholly-owned subsidiaries (“BellSouth”), respectfully submits comments on the Petition for Declaratory Ruling and Related Waivers filed by the Palau National Communications Corporation (“PNCC”)¹ in the above-captioned proceeding.² Granting the requested relief sought by the PNCC would be inconsistent with the Communications Act of 1934, as amended (“the Act”), exceed the scope of the Commission’s jurisdiction, and impose additional and unnecessary costs on consumers and carriers in the United States. Accordingly, the Commission should deny the Petition.

¹ See Petition for Declaratory Ruling that Palau National Communications Corporation Is Subject to FCC Jurisdiction and Eligible to Participate in Universal Service Programs and the National Exchange Carrier Association; Petition for Related Waivers and Application for International Section 214 Authority; Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (filed Nov. 16, 2001) (“Petition”).

² *Palau National Communications Corporation Seeks A Declaratory Ruling and Waiver of Certain Provisions of Parts 36, 54, and 69 of the Commission’s Rules, Pleading Cycle Established*, CC Docket No. 96-45, *Public Notice*, DA 01-2838 (rel. Dec. 6, 2001).

I. INTRODUCTION

The instant Petition includes an extensive list of requests seeking to enable the PNCC to participate in the federal universal service program. Specifically, the Petition asks the Commission to take the following actions:

- (1) issue a declaratory ruling that the PNCC is a United States common carrier subject to Commission jurisdiction pursuant to the Compact of Free Association (“Palau Compact” or “Compact”);
- (2) waive the definition of “incumbent local exchange carrier” as that term is used in certain provisions in Parts 25, 54, and 69 of the Commission’s rules;
- (3) waive Sections 36.611 and 36.613 of the Commission’s rules to enable the PNCC to receive high-cost loop support based on estimated costs;
- (4) waive the definition of “study area” in Part 36 of the Commission’s rules;
- (5) waive any other rules that may be necessary to enable the PNCC to receive support under the high-cost universal service support mechanism; and
- (6) authorize the PNCC to provide resold international switched telecommunications services on all international routes.

The Petition, though well-meaning, must fail because, as a threshold matter, the relief requested is inconsistent with the Act – the statute governing telecommunications law and policy in the United States. In addition to the Petition’s statutory deficiencies, it is telling that the PNCC must seek a waiver of just about every rule associated with the universal service program in order to qualify as an eligible carrier. Neither the Palau Compact nor the economic challenges apparently facing the PNCC provide the lawful grounds necessary to support a Commission ruling that the PNCC is eligible to receive universal service support. Moreover, granting the relief sought by the Petitioner would not serve the public interest. In fact, it would impose additional burdens on consumers and carriers in the United States by requiring them to bear the

costs of supporting telecommunications in Palau. Thus, as detailed more fully herein, since there is no legal or policy basis upon which to grant the PNCC's requests, the Petition must be denied.

II. ALLOWING THE PNCC TO RECEIVE UNIVERSAL SERVICE SUPPORT WOULD EXCEED THE SCOPE OF THE ACT AND THE COMMISSION'S JURISDICTION.

The Act does not authorize the Commission to allow the PNCC to participate in the federal universal service program. The Petition rests on the assumption that the Compact is the principal source of authority granting the Commission jurisdiction over the PNCC. This assumption, however, is flawed. The Act is the seminal law governing telecommunications law and policy in the United States – not an agreement between the United States government and the Republic of Palau. Thus, any analysis of Commission jurisdiction must begin with the Act.

The long-standing purpose of the Act as determined by Congress has been to make available “to all people of the United States . . . a rapid, efficient, Nation-wide . . . communication service.”³ Section 153 of the Act defines the term “United States” as “the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.”⁴ The Act further provides that the “[t]he term ‘State’ includes the District of Columbia and the Territories and possessions.”⁵ The U.S. territories and possessions include Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Marianas, American Samoa, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, the Midway Atoll, Navassa Island, the Palmyra Atoll, and Wake Island.⁶ The Commission's

³ 47 U.S.C. § 151 (emphasis added).

⁴ 47 U.S.C. § 153(51).

⁵ 47 U.S.C. § 153(40).

⁶ *Policy and Rules Governing the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, *Report and Order*, 11 FCC Rcd 9564, 9589, ¶ 55 n.118 (1996).

rules appropriately comport with the Act's definitions. The Commission has defined a "state" as "[a]ny of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa, and Guam."⁷ Thus, Palau is neither a state nor a territory or possession of the United States,⁸ and as such, is not subject to Commission jurisdiction.

Aware of this obvious statutory hurdle, the Petitioner asks the Commission to read the Act in conjunction with the Palau Compact.⁹ BellSouth urges the Commission to deny this request. The Act is the germane law governing telecommunications in the United States and is not meant to be read together with side agreements. Indeed, the Compact is neither a supplement nor an amendment to the Act and therefore in no way modifies or expands the Commission's jurisdiction. The Act's meaning is derived from the plain language of the statute, which clearly provides that the Commission's authority does not extend to Palau.

Moreover, the existence of a "strategic" or "unique" relationship between the U.S. and Palau does not make Palau a state, territory, or possession of the United States. Indeed, simply because the U.S. had a previous military presence in Palau, the U.S. dollar is the designated currency, or the PNCC received a loan from the U.S. Department of Agriculture's Rural Utilities Service does not convert Palau into a part of the United States. Nor does it grant the Commission jurisdiction over the PNCC.

Even if the Palau Compact were to be read in conjunction with the Act, it would not provide grounds for granting the relief requested. Section 131 of the Compact provides that the

⁷ 47 C.F.R. § 90.7 (Definitions).

⁸ *Policy and Rules Governing the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, *Report and Order*, 11 FCC Rcd 9564, 9590, ¶ 55 n.118 (1996).

⁹ Petition at 22.

Commission shall have jurisdiction “over all domestic and foreign communications services furnished by means of satellite earth terminal stations where such stations are owned or operated by United States common carriers and are located in Palau.”¹⁰

The PNCC misconstrues this provision of the Palau Compact as somehow expanding the Commission’s jurisdiction beyond that permitted under the Act. According to the Petitioner, the Palau Compact sets forth three criteria that establish the Commission’s jurisdiction over the PNCC. These criteria are: (1) the PNCC is a United States common carrier; (2) the PNCC provides domestic and international communications services in Palau; and (3) the PNCC uses satellite earth stations that it owns and that are located in Palau.¹¹ This interpretation, however, is incorrect.

First, Section 131 of the Compact does nothing more than recognize the Commission’s existing authority over United States common carriers – authority which is derived from the Act, not the Compact. Second, the PNCC is not a “United States common carrier.” The PNCC neither operates in the United States, nor is it owned or controlled by a United States common carrier. Simply providing domestic and international service in Palau and owning a satellite earth station in Palau do not make the PNCC a United States common carrier. Thus, the Petitioner has failed to demonstrate that the Commission has the requisite authority over the PNCC.

Recognizing the statutory pitfalls above, the Petitioner asks the Commission to interpret the phrase “the Nation” in Section 254 of the Act to include Palau.¹² Section 254(b)(3) states

¹⁰ Compact of Free Association, Pub. L. No. 99-658, 100 Stat. 3678 (1986), Art. III, § 131, codified at 48 U.S.C. § 1931 note (emphasis added).

¹¹ Petition at 15-18.

¹² See Petition at 23.

that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services”¹³ There is no need for the Commission to interpret the phrase “the Nation.” The Nation means the “United States” and, as demonstrated earlier, the Act expressly defines the “United States” as “the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.”¹⁴ Since the meaning of the phrase “the Nation” is neither ambiguous nor unclear, no further interpretation is necessary.

The Commission also should deny the Petitioner’s request to expand the term “insular” area as used in Section 254 to include Palau. As the Commission has recognized, the addition of “insular” areas to the universal service program was designed to “recognize[] the special circumstances faced by carriers and consumers in the insular areas of the United States”¹⁵ Thus, Congress’s expansion of the federal universal service program to include “insular” areas is statutorily limited to those “insular” areas that are part of the United States – of which Palau is not. The U.S. insular areas include American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands.¹⁶

¹³ 47 U.S.C. § 254(b)(3) (emphasis added).

¹⁴ 47 U.S.C. § 153(51).

¹⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8997, ¶ 414 (1997) (emphasis added) (“*Universal Service Order*”).

¹⁶ *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, *Further Notice of Proposed Rulemaking*, 14 FCC Rcd 21177, 21234, ¶ 138 (1999); *Universal Service Order*, 12 FCC Rcd at 8997, ¶ 414 n.1064. While it is true that the Commission has sought comment on whether Palau and other Freely Associated States should be included in the definition of “insular” areas, the Commission tentatively concluded that Palau does not qualify as an “insular” area. *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, *Further Notice of Proposed Rulemaking*, 14 FCC Rcd 21177, 21234, ¶ 138 (1999).

Just because an area is “insular” – that is “of, or having the form of an island”¹⁷ – does not automatically mean that it is eligible to receive universal service support. Clearly, any “insular” area eligible to participate in the universal service program must be a part of the United States. As the Commission points out, “Section 254(b)(3) states the goal of providing access to those in insular areas, but it qualifies its coverage to ‘[c]onsumers in all regions of the Nation,’ thereby excluding consumers in other nations.”¹⁸ Clearly, neither Congress nor the Commission intended access to universal service support to extend beyond the United States to include non-U.S. areas such as Palau.

Finally, the reference to Palau as an insular area in Title 48 of the United States Code is not persuasive. As the PNCC points out,¹⁹ this particular statute addresses Congressional energy policy²⁰ – not U.S. telecommunications policy. Title 48 is a separate and distinct statute and has no bearing on Title 47. Further, the rationale for including Palau as an “insular” area for the purposes of energy policy cannot be readily transferred to the telecommunications arena.

In sum, the Petitioner has not demonstrated that the PNCC is eligible to receive support from the universal service fund. The Act neither vests the Commission with jurisdiction over the PNCC as a United States common carrier nor authorizes the Commission to allow the PNCC to participate in the federal universal service program.

¹⁷ *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, *Further Notice of Proposed Rulemaking*, 14 FCC Rcd 21177, 21233, ¶ 137 n.255 (1999) (citing Webster’s New World Dictionary 731 (2d. College ed. 1982)).

¹⁸ *Id.* at 21234, ¶ 138 n.261.

¹⁹ Petition at 26.

²⁰ 48 U.S.C. § 1492(b)(1).

III. THE PETITIONERS HAVE NOT SATISFIED THE REQUIREMENTS FOR MULTIPLE WAIVERS.

As demonstrated above, the Commission lacks statutory authority over the PNCC. Moreover, the PNCC does not satisfy the Act's requirements for receiving universal service support. As such, the Commission cannot waive its universal service rules as requested by the Petitioner.

Even if the Commission were deemed to have authority over the PNCC, the Petitioner has not demonstrated that the multiple waivers sought will serve the public interest. As the Petitioner explains:

It is necessary to waive (1) the incumbent LEC requirements in Sections 36.611 and 69.2 of the Commission's rules, in order to allow PNCC to participate in NECA tariffs and pools; (2) the incumbent LEC requirements in Sections 54.301 and 54.303, in order to allow PNCC to participate in the universal service high-cost support mechanisms as an incumbent LEC; (3) the definition of "study area" in Parts 36, 54, and 69, in order to establish Palau as a new study area which will allow PNCC to calculate historical cost; and (4) rules regarding the submission of cost data for high-cost loop support.²¹

The fact that the PNCC requires a waiver of just about every rule associated with the universal service program is only further indication that the PNCC is not eligible to receive universal service support.

Moreover, contrary to the PNCC's claims, the waivers requested here are not identical to those previously granted by the Commission. The examples relied upon by the Petitioner are waivers granted to the Guam Telephone Authority and the American Samoa Telecommunications Authority. The critical difference between those cases and the instant request is that both Guam and American Samoa are clearly territories and/or possessions of the

²¹ Petition at 29.

United States²² thereby making the Commission's jurisdiction unambiguous. However, as demonstrated above in Section II., the instant Petition fails to pass the threshold test of establishing Commission jurisdiction. In the absence of statutory authority over the PNCC or Palau, the Commission cannot waive its universal service rules.

IV. ALLOWING THE PNCC TO RECEIVE UNIVERSAL SERVICE SUPPORT WOULD IMPOSE ADDITIONAL AND UNNECESSARY COSTS ON U.S. CONSUMERS AND CARRIERS.

Notwithstanding the statutory challenges discussed above, the Commission should deny the Petition as a matter of public policy. Granting the requested relief would force consumers and carriers in the United States to bear the costs of funding the advancement of telecommunications in Palau in the absence of any statutory obligation. Congress has not sanctioned such a policy. Thus, it would not only be unlawful to saddle U.S. consumers and carriers with this additional burden, but also would establish a precedent of unreasonably expanding the pool of eligible carriers. The Commission should not – and, in fact, cannot – allow funds to be taken away from consumers and carriers in the United States in order to promote telecommunications in foreign countries. Clearly, the outcome sought by the Petitioner does not advance the public interest. Accordingly, the Commission should deny the Petition.

V. CONCLUSION

As demonstrated herein, the relief requested by the PNCC is inconsistent with the Act, exceeds the scope of the Commission's jurisdiction, and will not serve the public interest. Thus,

²² *Policy and Rules Governing the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, *Report and Order*, 11 FCC Rcd 9564, 9589, ¶ 55 n.118 (1996); *see also* *Guam Telephone Authority Petition for Declaratory Ruling to Participate in the National Exchange Carrier Association, Inc.*, CCB/CPD File No. 96-29, *Memorandum Opinion and Order*, 13 FCC Rcd 1440, ¶ 2 (1997) (“Guam is a United States territory in the western part of the Pacific Ocean approximately 6000 miles from the mainland.”).

there is no statutory or policy basis upon which the Commission can grant the Petitioner's request. Accordingly, the Commission should deny the Petition.

Respectfully submitted,

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Date: January 7, 2002

CERTIFICATE OF SERVICE

I do hereby certify that I have this 7th day of January 2002 served the following parties to this action with a copy of the foregoing **COMMENTS OF BELLSOUTH CORPORATION** by electronic filing and/or by placing a true and correct copy of the same in the United States Mail, postage prepaid to the parties listed below.

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